

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF ACCESS TO REAL  
PROPERTY IN NASSAU COUNTY,  
NEW YORK

1244 West Broadway Property LLC,

Respondent.

Proceeding under Section 104(e) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980,  
as amended, 42 U.S.C. § 9604(e).

Index No. CERCLA-02-2018-2024

ADMINISTRATIVE ORDER DIRECTING COMPLIANCE  
WITH REQUEST FOR ACCESS

I. JURISDICTION

1. This Administrative Order ("Order") is issued to 1244 West Broadway Property LLC (hereinafter, "Respondent"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400 (d)(4) ("NCP"). This authority has been delegated to the United States Environmental Protection Agency ("EPA") and, within EPA, to the Director of the Emergency and Remedial Response Division in Region 2.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant to EPA and its officers, employees, agents, contractors, and representatives entry and access to the property located at 1244 West Broadway, Hewlett, New York (identified on the Nassau County Land and Tax Map as Section 39, Block 569, Lot 512) (the "Subject Property") for the purpose of performing response activities pursuant to CERCLA at the Peninsula Boulevard Groundwater Plume Superfund Site ("Site"). This Order further requires Respondent to refrain from interfering with access to the Subject Property by EPA and its officers, employees, agents, contractors, and representatives, for the purposes set forth herein.

### III. FINDINGS OF FACT

3. The Site consists of the area within and around a groundwater plume located in the Village of Hewlett, Town of Hempstead, Nassau County, New York. John F. Kennedy International Airport is located approximately three miles to the west of the Site. The Site location is shown on the map attached hereto as Attachment 1, and the Subject Property is shown on the map attached hereto as Attachment 2.
4. A series of investigations were conducted by the New York State Department of Environmental Conservation ("NYSDEC") from 1991 to 1999 near the Subject Property. The investigations revealed an extensive groundwater contaminant plume extending both to the north and south of Peninsula Boulevard, primarily consisting of tetrachloroethylene ("PCE") and its breakdown products, including trichloroethylene ("TCE").
5. On March 7, 2004, EPA proposed the Site for inclusion on CERCLA's National Priorities List ("NPL"), and on July 22, 2004, EPA included the Site on the NPL. EPA has elected to address the conditions at the Site in separate phases, or operable units (OUs). OU1 concerns the cleanup of contaminated groundwater at the Site, and OU2 concerns the remediation of the sources of the groundwater contamination.
6. EPA conducted a remedial investigation/feasibility study ("RI/FS") for OU1 of the Site from 2005 through 2010. The RI revealed groundwater contaminated with PCE, TCE, and low levels of other volatile organic compounds. EPA selected a remedy for OU1 in September 2011, which called for the extraction and treatment of contaminated groundwater, in-situ chemical treatment in targeted areas, and institutional controls.
7. EPA conducted an RI for OU2 of the Site from 2012 to 2016. The OU2 RI identified two source areas of contamination, which are referred to as areas of concern ("AOCs"). AOC 1 includes the Subject Property, which has historically been the location of dry cleaning operations and is currently the location of Cedarwood Cleaners. EPA has identified subsurface soil and groundwater contamination at the Subject Property at concentrations that significantly exceed levels deemed by EPA to be protective of human health and the environment. In addition, testing revealed the presence of dense non-aqueous phase liquid ("DNAPL") in the southern portion of the Subject Property.
8. In September 2017, EPA selected a remedy for OU2 in a Record of Decision ("2017 ROD"), which addresses the human health risks posed by conditions at both AOCs. With respect to AOC 1, the selected remedy included in-situ treatment of the contaminated groundwater and soil through heat-enhanced anaerobic bioremediation, long-term monitoring of groundwater, and institutional controls. EPA is preparing to commence the remedial design of the remedy as it pertains to response activities at the Subject Property. During the remedial design process, EPA intends to collect additional data concerning the source areas of contamination and generate a detailed set of plans and specifications for the implementation of the remedy.

9. Respondent purchased the Subject Property on January 4, 2017. The Subject Property is approximately one-quarter of an acre in size and includes a one-story, multi-use building. EPA requires access to the building and grounds at the Subject Property in order for EPA to perform remedial design activities associated with OU2 of the Site, including site reconnaissance, geophysical surveying, monitoring activities, and sampling activities. The sampling activities, in particular, include the collection of soil borings, soil-gas sampling, monitoring well installation, and groundwater sampling.
10. Despite numerous requests from representatives of EPA, Respondent has failed to grant access to EPA for the purpose of performing the response activities described above. By email dated January 24, 2018, EPA requested that Respondent voluntarily provide access and execute a consent to access form regarding the Subject Property so that EPA could perform remedial design activities for OU2 of the Site. EPA met with Respondent on January 25, 2018, at which meeting consent to access was discussed. EPA attempted to contact Respondent regarding access to the Subject Property on March 13, March 27, April 10, May 22, June 5, June 18, July 17, July 25, and July 30, 2018. EPA sent Respondent email messages regarding access to the Subject Property on June 5, June 28, July 17, and July 25, 2018. On those occasions that EPA was able to contact Respondent, EPA was informed that the consent to access form was being considered. On August 1, 2018, EPA called Respondent to reiterate the request for access to the Subject Property and was told that Respondent was preparing minor revisions to the one-page, consent to access form. On August 13, EPA contacted Respondent and was again informed that Respondent was working on the revisions to the access form and would be providing those revisions to EPA that day. No such proposed revisions have been provided.
11. Respondent's failure to provide EPA with access to the Subject Property threatens to interfere with EPA's completion of the remedial design for OU2 of the Site.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
13. Based on the foregoing findings of fact in Section III of this Order, EPA has determined that there has been a release or threatened release of hazardous substances at the Subject Property within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1), as the terms "hazardous substances" and "release" are respectively defined in Sections 101(14) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(14) and (22).
14. For purposes of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3), the Subject Property is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), or an establishment, place, or property:
  - (A) from which a hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported;

- (B) from which or to which a hazardous substance or pollutant or contaminant has been or may have been released;
  - (C) where such a release is or may be threatened; and/or
  - (D) where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under CERCLA.
15. EPA has requested on multiple occasions that Respondent grant access to the Subject Property for the purposes of EPA performing the response activities described in Paragraph 9, above, but Respondent has failed to provide EPA with access to the Subject Property.

#### V. ORDER

16. Based on the Findings of Fact and Conclusions of Law and Determinations set forth above, and on the Administrative Record, Respondent is hereby ordered to provide to EPA and its officers, employees, agents, contractors, and any other designated representatives with full and unrestricted entry and access to the Subject Property for the purpose of performing remedial design activities, including the tasks referred to in Paragraph 9 above. Respondent shall provide such access to the Subject Property from the effective date of this Order until EPA informs Respondent in writing that the activities for which access is needed are complete and EPA no longer requires access to perform the above-described remedial design activities. EPA anticipates the duration of access to be 18 months. EPA presence at the Subject Property is expected to be intermittent and will generally include an initial one-day site visit and subsequent, periodic sampling events of up to several weeks in duration.
17. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to Section 104(e) of CERCLA and Section 300.400(d) of the NCP, and it shall not interfere with or otherwise limit any activity conducted at the Subject Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or any other designated representatives. Any such interference shall be deemed a violation of this Order.
18. Nothing herein limits or otherwise affects any right of entry or access held by the United States.
19. This Order shall apply to and be binding upon Respondent and its successors and assigns, each agent of Respondent, and all other persons and entities who are under the direct or indirect control of Respondent.
20. In the event of any transfer of any interest in the Subject Property by Respondent or its agents, successors, or assigns, Respondent and its agents, successors, or assigns shall not transfer such interest in any manner that would have the effect of hindering or otherwise limiting continued access to the Subject Property by EPA or its officers, employees, agents, contractors, or any other designated representatives for the purpose of carrying out the activities identified in Paragraph 9 of this Order. Respondent or its agents, successors, or assigns shall notify EPA in writing not less than thirty calendar days prior



to any such transfer, and shall include in such notice the name, address, and other contact information of the party to whom such interest will be conveyed; and Respondent shall also, not less than thirty days prior to any such transfer, notify the other parties to the conveyance of the provisions of this Order and shall provide a copy of this Order to each such party.

## VI. ENFORCEMENT

21. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose on Respondent civil penalties of up to \$55,907 per violation per day (or such higher amount as may be established pursuant to the Debt Collection and Improvement Act of 1996 ("DCIA")), as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the DCIA (see Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190 (January 10, 2018) and 40 C.F.R. Part 19.4), for each day that Respondent unreasonably fails to comply with this Order. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Subject Property, and recovery of the costs thereof.
22. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action that EPA has now or may have in the future against Respondent, or against any entity that is not a party to this Order.
23. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other person under CERCLA related to the Site or any other facility.
24. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

## VII. ADMINISTRATIVE RECORD

25. EPA has established an Administrative Record which contains the documents that form the basis for the need for access and the issuance of this Order. The Administrative Record is available electronically for review. Respondent may contact Gloria Sosa, the Remedial Project Manager for the Site, at (212) 637-4283 if Respondent wishes to review the Administrative Record.

## VIII. OPPORTUNITY TO CONFER

26. Within five (5) days after receipt of this Order by Respondent, Respondent may request a conference with EPA on any matter pertinent to this Order, including its applicability, the factual findings, the conclusions of law or determinations upon which it is based, or any other relevant and material issues or contentions that Respondent may have regarding this Order. Any such conference shall be held no later than five (5) days after Respondent's

request, unless EPA agrees to a date beyond that time. Respondent may appear in person or by an attorney or other representative at the conference, which may be held in person or by conference call. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if Respondent fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Margo Ludmer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

Telephone: (212) 637-3187  
E-mail: ludmer.margo@epa.gov

#### IX. EFFECTIVE DATE; COMPUTATION OF TIME

27. This Order shall be effective seven (7) days after its receipt by Respondent unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, EPA will notify Respondent of its determination and, if applicable, the date upon which the Order shall become effective. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; if EPA does use such a form of notification, it will also confirm such notification by first class, certified, or expedited mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.
28. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the next business day.

#### X. NOTICE OF INTENTION TO COMPLY

29. Within two (2) days after the effective date of this Order, Respondent shall notify EPA in writing whether Respondent intends to comply with the terms of this Order. Such written notice shall be sent to Margo Ludmer at the address set forth in Paragraph 26, above. Respondent's failure to notify EPA in a timely manner of its unconditional intent to comply with this Order shall be construed as non-compliance with this Order and treated as a violation of the Order.

## XI. TERMINATION

30. This Order and all of its terms and provisions shall remain in effect until the completion of the remedial design of the OU2 remedy as it pertains to AOC 1 at the Site.

SO ORDERED.

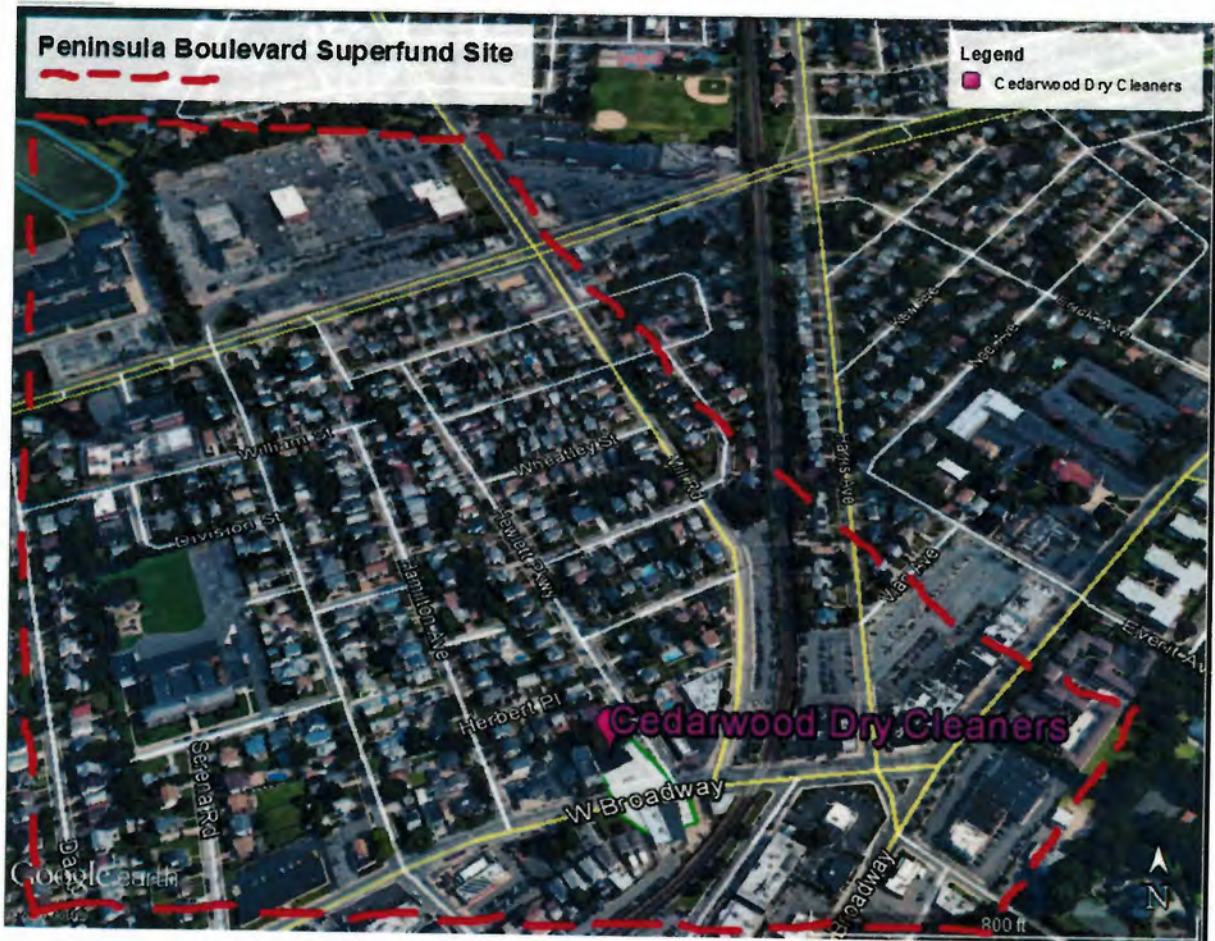


John Prince, Acting Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2

September 5, 2018  
Date of Issuance



# Attachment 1





## Attachment 2

